

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of	:	HABETHA, et al.
Serial No.	:	10/595,799
Confirmation No.	:	6942
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Group Art Unit	:	2617
Examiner	:	BEHNAMIAN, SHAHRIAR
Attorney Docket No.	:	2003P00862WOUS [DE030391]

APPEAL BRIEF
On Appeal from Group Art Unit 2617

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Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed on July 14, 2011
and in response to the final Office Action of April 15, 2011.

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I. REAL PARTY IN INTEREST

The real party in interest of the above-identified application is Koninklijke Philips Electronics N.V., the assignee of record, whose assignment is recorded in the USPTO as of February 26, 2007 on four (4) pages beginning at Reel 018930, Frame 0095.

II. RELATED APPEALS AND INTERFERENCES

Appellant is not aware of any pending appeals, judicial proceedings, or interferences which may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

- a) Claims 1-12 are pending at the time of filing this Appeal Brief, stand rejected in a final Office Action dated April 15, 2011, and are the subject of this appeal.
- b) Claims 1 and 9 are independent.

IV. STATUS OF AMENDMENTS

The claims listed in section "VIII. Claims Appendix" of this Appeal Brief correspond to the claims as submitted in Appellant's response filed on February 7, 2011 (in response to the non-final Office Action dated November 15, 2010). No claim amendments have been submitted following the response of February 7, 2011, nor are any amendments pending.

V. SUMMARY OF CLAIMED SUBJECT MATTER¹

The claimed invention, as recited in claim 1, is directed to a method for direct communication between a first station and a second station in an Access Point controlled wireless network (see Appellant's specification at least at page 3, lines 31-page 4, line 8), wherein a communication channel is ruled by an identifier associated with the Access Point (page 2, lines 2-4), comprising: generating a second identifier by said first station (page 3, lines 1-2 and page 4, lines 11-14), the second identifier different from the identifier associated with the Access Point (page 4, lines 13-16); sending, by said first station to the second station, an invitation message for direct communication carrying said second identifier (page 4, lines 4-8); sending, by said second station, a response message acknowledging the invitation message (page 4, lines 9-12); and setting up direct communication between said first station and said second station using said second identifier (page 4, lines 9-12), wherein the first station and the second station are different from the Access Point (page 4, lines 7-8).

The claimed invention, as recited in claim 9, is directed to an access point controlled wireless network (see Appellant's specification at least at page 3, lines 31-page 4, line 8), wherein a first communication channel is ruled by an identifier associated with the access point (page 2, lines 2-4), said wireless network comprising: at least a first station and a second station

¹ It should be explicitly noted that it is not Appellant's intention that the currently claimed or described embodiments be limited to operation within the illustrative embodiments described below beyond what is required by the claim language. Further description of the illustrative embodiments are provided indicating portions of the claims which cover the illustrative embodiments merely for compliance with requirements of this appeal without intending to read any further interpreted limitations into the claims as presented.

capable of establishing direct communication (page 5, lines 4-6), wherein: said first station generates a second identifier (page 3, lines 1-2 and page 4, lines 11-14), the second identifier different from the identifier associated with the access point (page 4, lines 13-16), and sends an invitation message for direct communication carrying said second identifier to the second station (page 4, lines 4-8); said second station sends a response message acknowledging the invitation message; and said first station sets up direct communication with said second station using said second identifier (page 4, lines 9-12), wherein the first station and the second station are different from the access point (page 4, lines 7-8).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Whether claims 1, 2, 4-6, and 8-12 are properly rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent 6,580,704 to Wellig et al. (“Wellig”).
- B. Whether claim 3 is properly rejected under 35 U.S.C. §103(a) as being unpatentable over Wellig in view of U.S. Patent 6,321,095 to Gavette (“Gavette”).
- C. Whether claim 7 is properly rejected under 35 U.S.C. §103(a) as being unpatentable over Wellig in view of U.S. Patent 6,718,159 to Sato (“Sato”).

VII. ARGUMENT

Appellant respectfully traverses the rejections in accordance with the detailed arguments set forth below.

A. Claims 1, 2, 4-6, and 8-12 are not properly rejected under 35 U.S.C. §102(b) as anticipated by Wellig.

1. Claim 1

Claim 1 is an independent claim that serves as a base claim for dependent claims 2, 4-6, 8, and 12. Claim 1 requires:

A method for direct communication between a first station and a second station in an Access Point controlled wireless network, wherein a communication channel is ruled by an identifier associated with the Access Point, comprising:

generating a second identifier by said first station, the second identifier different from the identifier associated with the Access Point;

sending, by said first station to the second station, an invitation message for direct communication carrying said second identifier;

sending, by said second station, a response message acknowledging the invitation message; and

setting up direct communication between said first station and said second station using said second identifier, wherein the first station and the second station are different from the Access Point. [Emphasis added].

On page 2 of the final Office Action, the Examiner alleges that Wellig, Figs. 1, 4, and step 42 of Fig. 4 discloses the features of generating a second identifier by said first station, the second identifier different from the identifier associated with the Access Point; sending, by said first station to the second station, an invitation message for direct communication carrying said second identifier as set forth in claim 1.

Appellant respectfully traverses the Examiner's interpretation of Wellig.

Fig. 1 of Wellig illustrates a direct mode communication method employed in an access point controlled WLAN system. Step 42 of Fig. 4 recites: "initiating MT1 sends connection request to its AP with the higher layer protocol address of the remote MT2."

Appellant respectfully asserts that the foregoing disclosure of Wellig does not anticipate claim 1.

For example, claim 1 requires sending, by said first station to the second station, an invitation message for direct communication carrying said second identifier. Wellig does not disclose such features of claim 1.

In contrast to claim 1, Wellig, Fig. 4 steps 42, 43, and column 9, lines 8-14 discloses the initiating mobile terminal sends a connection request message to the associated access point along with the corresponding higher layer protocol address corresponding to the destination mobile terminal. Consulting a mapping table in a database of the associated access point will establish that the destination mobile terminal is within the same cell and having the same access point.

In other words, this cited portion of Wellig teaches that the corresponding higher layer protocol address is sent by the first station to the access point. Upon receipt, a mapping table in a database of the access point will establish whether or not the destination mobile terminal is within the same cell.

The first station never sends an invitation message for direct communication carrying said second identifier to the destination station. Nor does the access point forward the message sent by the first station.

Appellant respectfully asserts that the foregoing disclosure of Wellig does not anticipate the claimed invention because claim 1 requires the first station to send the invitation message carrying the identifier to the second station.

Wellig does not disclose sending the identifier to the second station. Instead, Wellig discloses sending the protocol address to the access point. Therefore, Wellig fails to disclose every element in Appellant's claim 1 and as such the rejection to claim 1 under 35 U.S.C. 102 should be reversed.

Furthermore, the cited portions of Wellig do not disclose generating a second identifier by said first station, as required in claim 1.

The Examiner relies on Wellig, Fig. 4, step 42 as allegedly anticipating the feature of generating a second identifier by said first station. Wellig, Fig. 4, step 42 recites: "Initiating MT1 (mobile terminal 1) sends a connection request to its AP (access point) with the higher layer protocol address of the remote MT2 (mobile terminal 2)."

On page 7 of the final Office Action, Response to Arguments section, the Examiner apparently concludes that the term "generating" is equivalent to the term "including." Appellant respectfully traverses the Examiner's interpretation.

Wellig discloses that the protocol address is sent along with the connection request message (see Wellig, column 9, lines 8-10: "the initiating MT just sends a connection request message to the associated AP along with the corresponding higher layer protocol address corresponding to the destination or remote MT2 (step 42)." Emphasis added.). In short, Wellig teaches that the connection request message is sent along with the protocol address. The

Examiner apparently considers that Wellig's teaching of sending a message "along with" an address is equivalent to the term "including." The Examiner further concludes that the term "including" is equivalent to, and reads on, the term "generating" as recited in claim 1.

Appellant respectfully asserts that the term "along with" is not the same as or equivalent to the term "including." The plain meaning of "including" is, for example, containing as part of a whole being considered. The action of sending a first item "along with" a second item does not mean that the first and second items are considered as part of a whole. Instead, the two items are merely sent along with each other. Therefore, the term "along with" is distinct from, and is not equivalent to the term "including."

However, even if the Board accepts the Examiner's position that the term "along with" is equivalent to the term "including," a position with which Appellant does not agree with nor acquiesce to, Appellant respectfully asserts that the term "including" is distinct from, and is not equivalent to, the claimed term of "generating." Therefore, Wellig does not anticipate the claimed generating a second identifier by said first station.

As noted above, the plain meaning of the term "including" is to take in as a part or member, i.e. to contain as a secondary element. Wellig discloses a higher layer protocol address (e.g. an IP address, an Ethernet address, an email address, or a mobile phone number (see Wellig, column 7, lines 14-16)) is sent along with a connection request message. However, even if Wellig's connection request message is deemed by the Board to be "including" a protocol address, Wellig's mobile terminal clearly does not generate the higher layer protocol address because such addresses and phone numbers etc. are already in existence and do not need to be generated. Instead of generating the address, Wellig merely sends an existing IP address or an

email address etc. along with a connection request message. Therefore, Wellig does not disclose the claimed **generating a second identifier by said first station**. Accordingly, Wellig does not anticipate Appellant's claim 1, and as such, the 102 rejection should be reversed.

2. Claim 9

Claim 9 is an independent claim from which claims 10 and 11 depend. Claim 9 calls in part for "said first station generates a second identifier, the second identifier different from the identifier associated with the access point, and sends an invitation message for direct communication carrying said second identifier to the second station. . . ."

Claim 9 is directed to an access point controlled wireless network, whereas claim 1 is directed to a method. As such, claim 9 is different from claim 1. However, in the final Office Action, claim 9 is rejected using the same arguments as for claim 1. Appellant respectfully submits that claim 9 must be interpreted on its own merits.

However, in view of the Office Action using the same arguments as in claim 1, Appellant applies the argument from claim 1 above to the specific features and interpretation of claim 9 without any loss of generality or limitation. It is respectfully submitted that Wellig does not disclose all the features of claim 9. Therefore, it is respectfully requested that the Board reverse this rejection of claim 9 under 35 U.S.C. 102(b).

3. Claims 2, 4-6, 8, and 10-12

Each of claims 2, 4-6, 8, and 10-12 ultimately depend from an allowable parent claim. Furthermore, each dependent claim includes additional distinguishing features. For each

dependent claim Appellant applies the above arguments from base claims 1 or 9 to the specific features and interpretation of each respective dependent claim without any loss of generality or limitation. Thus, Appellant respectfully submits that dependent claims 2, 4-6, 8, and 10-12 are allowable at least by virtue of their dependency on an allowable parent claim and that the rejection under 35 U.S.C. 102(b) is unfounded and should be reversed.

B. Claim 3 is not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Wellig in view of Gavette.

4. Claim 3

Claim 3 depends from allowable claim 1. Furthermore, claim 3 includes additional distinguishing features. Appellant applies the above arguments from claim 1 to the specific features and interpretation of claim 3 without any loss of generality or limitation. Gavette does not cure the deficiencies of Wellig as noted above with respect to claim 1. Thus, Appellant respectfully submits that claim 3 is allowable at least by virtue of its dependency on allowable claim 1 and that the rejection under 35 U.S.C. 103(a) is unfounded and should be reversed.

C. Claim 7 is not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Wellig in view of Sato.

5. Claim 7

Claim 7 depends from allowable claim 1. Furthermore, claim 7 includes additional distinguishing features. Appellant applies the above arguments from claim 1 to the specific features and interpretation of claim 7 without any loss of generality or limitation. Sato does not

cure the deficiencies of Wellig as noted above with respect to claim 1. Thus, Appellant respectfully submits that claim 7 is allowable at least by virtue of its dependency on allowable claim 1 and that the rejection under 35 U.S.C. 103(a) is unfounded and should be reversed.

CONCLUSION

In light of the above, Appellant respectfully submits that the rejection of claims 1-12 are in error, legally and factually, and must be reversed.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

1. (Previously presented) A method for direct communication between a first station and a second station in an Access Point controlled wireless network, wherein a communication channel is ruled by an identifier associated with the Access Point, comprising:

generating a second identifier by said first station, the second identifier different from the identifier associated with the Access Point;

sending, by said first station to the second station, an invitation message for direct communication carrying said second identifier;

sending, by said second station, a response message acknowledging the invitation message; and

setting up direct communication between said first station and said second station using said second identifier, wherein the first station and the second station are different from the Access Point.

2. (Previously presented) The method according to claim 1, wherein said invitation message and said response message are sent via the Access Point using the identifier associated with the Access Point.

3. (Previously presented) The method according to claim 1, wherein said invitation message and said response message are exchanged directly between said first station and said second station using the second identifier different from the identifier associated with the Access Point.

4. (Original) The method according to claim 1, wherein said response message contains information that said second identifier is confirmed or that said second identifier is rejected and a third identifier is proposed, wherein said third identifier is different from the identifier associated with the Access Point.

5. (Previously presented) The method according to claim 12, wherein said response message contains information that said second channel is confirmed or that said second channel is rejected and the channel which is associated with the Access Point or a third channel is proposed.

6. (Original) The method according to claim 1, wherein said second identifier is a dedicated identifier for direct communication between stations.

7. (Previously presented) The method according to claim 1, wherein carrier sensing is applied to avoid collision on said communication channel ruled by an identifier associated with the Access Point.

8. (Previously presented) Use of the method according to claim 1 in the communication protocol of the IEEE 802.11 standard.

9. (Previously presented) An access point controlled wireless network, wherein a first communication channel is ruled by an identifier associated with the access point, said wireless network comprising:

at least a first station and a second station capable of establishing direct communication, wherein:

said first station generates a second identifier, the second identifier different from the identifier associated with the access point, and sends an invitation message for direct communication carrying said second identifier to the second station; said second station sends a response message acknowledging the invitation message; and said first station sets up direct communication with said second station using said second identifier, wherein the first station and the second station are different from the access point.

10. (Previously presented) The wireless network of claim 9, wherein the first station chooses the first communication channel or a second communication channel, different from the first communication channel, for direct communication with the second station, and when the second communication channel is chosen, the first station sends an indication of the second communication channel to the second station.

11. (Previously presented) The wireless network of claim 10, wherein, when the second station receives an indication of the second communication channel, the response message contains information that the second communication channel is confirmed or that the second communication channel is rejected and the first communication channel which is associated with the access point or a third communication channel is proposed.

12. (Previously presented) The method according to claim 1, wherein the first station chooses the first communication channel or a second communication channel, different from the first communication channel, for direct communication with the second station, and when the second communication channel is chosen, the first station sends an indication of the second communication channel to the second station.

IX. EVIDENCE APPENDIX

No evidence has been submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title nor any other evidence entered by the examiner and relied upon by Appellant in the appeal.

X. RELATED PROCEEDINGS APPENDIX

Appellant is not aware of any appeals or interferences related to the present application.